DOCUMENT RESUME

ED 380 943 EC 303 817

TITLE	Provisions for Youth with Disabilities in Vocational Education. 1992 Carl Perkins Act Final Regulations.
INSTITUTION	National Transition Network, Minneapolis, MN.
SPONS AGENCY	Office of Special Education and Rehabilitative Services (ED), Washington, DC.
PUB DATE	93
CONTRACT	H158G20002
NOTE	5p.
AVAILABLE FROM	National Transition Network, Institute on Community Integration, University of Minnesota, 6 Pattee Hall, 150 Pillsbury Dr. S.E., Minneapolis, MN 55455 (available in alternative formats).
PUB TYPE	Collected Works - Serials (022) -- Information Analyses (070)
JOURNAL CIT	Policy Update; Fall 1993
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Access to Education; *Disabilities; *Educational Opportunities; Federal Legislation; *Federal Regulation; Legal Problems; Secondary Education; Student Participation; *Transitional Programs; *Vocational Education
IDENTIFIERS	*Carl D Perkins Voc and Appl Techn Educ Act 1990

ABSTRACT

This transition policy update presents regulatory language associated with key provisions of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, as set forth in the August 14, 1992 issue of the "Federal Register." The discussion focuses on: the inclusion of youth with disabilities within the term "special populations"; information dissemination to special populations about vocational education opportunities; equitable participation in vocational education; full participation in vocational education; distinction between "project" and "program"; and input into state plans by parents and advocates for students with disabilities. The paper concludes that the final regulations for the Perkins Act are undergoing substantive legal challenges, but that students, their parents, and advocates should expect local vocational programs to be responsive in the areas of information dissemination, recruitment, services, and transition. (JDD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

ED 380 943

National Transition Network

Policy Update

Fall 1993

1992 Carl Perkins Act Final Regulations

Provisions for Youth with Disabilities in Vocational Education

On August 14, 1992 the U. S. Department of Education published final regulations implementing the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (P. L. 101-392). Vocational education, by its very nature is directly involved in the transition from school to employment. The purpose of this Policy Update is to present regulatory language associated with key provisions within the Act, along with several concerns that have been raised regarding those provisions. It is important to note that there have been significant challenges, including a lawsuit filed by the Center for Law and Education on behalf of nine different plaintiffs, to some of the regulatory language in those final regulations. Despite these legal challenges, the official policy of the U.S. Department of Education continues to be that set forth in the August 14, 1992 Federal Register.

■ Definition [Section 400.4]

Youth with disabilities are included within the term *special populations* in the regulations. In particular, special populations —

> *refers to individuals with disabilities, educationally and economically disadvantaged individuals (including foster children), individuals of limited English proficiency, individuals who participate in programs designed to eliminate sex bias, and individuals in correctional institutions.*

By and large, the assurances and provisions that relate to youth with disabilities will be referenced to the more general term *special populations*. The Perkins definition of "individuals with disabilities" is also clarified in this section to be in alignment with Section 3(2) of the Americans With Disabilities Act of 1990, and thus is consistent with disability definitions in both the Individuals With Disabilities Education Act (P. L. 101-476) and the Rehabilitation Act Amendments of 1992 (P. L. 102-569).

EC 303617

■ Information Dissemination [Section 403.193]

Local school districts receiving Perkins dollars must provide information to special populations (including individuals with disabilities) about vocational education opportunities. The regulatory language is very specific and the most prescribed sections are cited in their entirety below:

(a)(1) Each local educational agency that receives funds under Title II of the Act shall provide to students who are members of special populations and their parents information concerning —

(i) the opportunities available in vocational education;
(ii) the requirements for eligibility for enrollment in those vocational education programs;
(iii) special courses that are available;
(iv) special services that are available;
(v) employment opportunities; and
(vi) placement.

(b) this information must be provided at least one year before the students enter, or are of appropriate age for, the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade.

(c) each eligible institution shall—

(1) provide this information to anyone who requests it;

(2) if appropriate, assist in the preparation of applications relating to that admission.

(d) this information must, to the extent practicable, be in a language and form that parents and students understand.

The National Transition Network is a collaboration of the University of Arkansas; Colorado State University; University of Illinois, Urbana-Champaign; University of Minnesota; PACER Center; Technical Assistance for Parent Programs; and the University of Vermont. Its headquarters are at the Institute on Community Integration (UAP), University of Minnesota, Pattee Hall, 150 Pillsbury Dr. SE, Minneapolis, MN 55455, (612) 626-8200.

BEST COPY AVAILABLE

This requirement applies to all institutions that receive Perkins funds, including area vocational schools that serve consortia of local school districts. Perkins funds, including Title II Basic Grant funds, may be used to satisfy this information dissemination requirement. Recipients need not charge this cost to administrative funds.

■ Equitable Participation in Vocational Education [Section 403.111(c)(3)]

Access to vocational education programs for special populations means that these students, including those with disabilities, are provided the same opportunity to enter vocational education that is equal to that afforded to the general student population. Section 403.111(c)(3) provides for this opportunity by stating:

(c) Funds made available from an award must be used to provide vocational education programs that—

(3) provide for the equitable participation of members of special populations in vocational education so that these populations have an opportunity to enter vocational education that is equal to that afforded to the general student population.

This regulatory language attempts to clarify what was purported to be a confusion in the language of the Act itself. As noted in the "Analysis of Comments and Changes" section of the regulations:

the revised regulations clarify the distinction in the Act concerning the requirement to provide an opportunity to members of special populations to enter a vocational education program as opposed to the requirement to provide the services necessary to enable members of special populations to participate fully and successfully in a vocational education program.

There is a substantive difference between the term *equitable participation* in 403.111(c)(3), and the term *full participation* in 403.111(a)(2)(i). The Secretary has interpreted equitable participation to require a lesser burden for the recipient than full participation. Full participation requires some affirmative conduct on the part of the recipient to ensure the success of the special population student in the vocational program. Equitable participation, on the other hand, only requires that the special population students have the same opportunity to participate as that afforded to the general student population. Inasmuch as the Secretary does not require that the recipient take the necessary steps to ensure that the student succeed under the interpretation of equitable participation, this may be construed as a lesser standard than full participation.

Nonetheless, the requirement for equitable participation applies to the full range of vocational education programs available to members of the general population, not just projects, services, and activities funded with Perkins funds. As the Secretary stated in a comment analysis to the final regulations—

The Secretary does not believe that it is possible or appropriate to limit application of the assurances of equal access of students and specific projects, services, and activities that are funded under the Act. To do so would be inconsistent with the concept of fundamental fairness that equal access is intended to provide members of special populations.

As will be noted in the next section, however, the provision of full participation applies only to those projects, services, and activities funded with Perkins dollars.

It should also be noted that Appendix A to Part 403 of the regulations provides illustrations of equitable participation. The first example discusses a recipient conducting an informal meeting to provide information concerning vocational programs to parents of students who are members of special populations. To ensure equitable participation, the recipient should conduct the meeting at a time and location convenient to these parents and students. At the meeting, the recipient should provide a staff person to assist students or their parents to complete any forms necessary to enroll in the area vocational school program.

A second example in Appendix A relates to a student with a hearing impairment in a local educational agency (LEA). The student could participate in the vocational education program only if an interpreter is provided for that student. To comply with equitable participation, the LEA cannot refuse to admit the student because of the need for an interpreter. The regulatory example does not suggest that the LEA must provide funds for that interpreter; the LEA simply cannot refuse to admit such a student. Under the Secretary's interpretation of full participation, however, the LEA would be required to provide an interpreter if that is necessary for the student to succeed in the vocational education program.

■ Full Participation in Vocational Education [Sections 403.111(a)(2)(i), 403.190(b), and 490.193(e)]

Section 235(a) of the Act requires each recipient to use Perkins funds to improve vocational education programs with full participation of individuals who are members of special populations. The two words *full participation* are perhaps the two most significant in the entire Perkins statute. While Congress failed to define the meaning of the term *full participation*, the U.S. Department of Education defined the term in the regulations in Section 403.111(a)(2)(i) to mean the supplementary and other services necessary for them to succeed in vocational education.

The term *supplementary services* is defined in the statute and regulations to include curriculum and equipment modifications, classroom modifications, supportive personnel, and instructional aids and devices. The Secretary defined the term *other services* to mean those services described in section 118(c) of the statute and 403.190(b) of the regulations—

Each eligible recipient . . . will:

(1) Assist students who are members of special populations to enter vocational education programs, and, with respect to students with disabilities, assist in fulfilling the transitional service requirement of Section 626 of the IDEA;

(2) Assess the special needs of students . . . with respect to their successful completion of the vocational education program in the most integrated setting possible;

(3) Provide supplementary services (defined as curriculum and equipment modifications, classroom modifications, supportive personnel, and instructional aids and devices) to students who are members of special populations;

(4) Provide guidance, counseling, and career development activities conducted by professionally trained counselors and teachers who are associated with the provision of those special services; and

(5) Provide counseling and instructional services designed to facilitate the transition from school to post-school employment and career opportunities.

While these five sets of provisions appear comprehensive, they are indeed more narrow than what is implied in the Act, and also are the subject of the lawsuit filed by the Center for Law and Education.

Since the issuance of the final regulations in August 1992, the Education Department has received many questions from the field as to whether particular activities would be covered under the term *full participation*. For example: *May the cost for a student who is economically disadvantaged, who must receive a hepatitis vaccination to fully participate in particular health-related courses, be allocable to the Perkins grant?* Or: *If a student who is economically disadvantaged is required to have a particular type of uniform to participate in a vocational course, or if that student requires transportation to participate in a field or worksite activity, may such costs be charged to the Perkins grant as part of the full participation requirement?* The Department has generally responded to these questions by stating that the recipient may spend the Perkins funds on whatever services are deemed essential for the special population student to succeed in the vocational education program. Thus, the recipient may use Perkins funds for the cost of the vaccination, transportation, or special uniforms that are necessary for the student to succeed in the program.

In addition, Section 403.193(e) states:

> *An eligible recipient (local school district) is not required to use non-federal funds to pay the costs of services and activities required by Section 403.190(b) unless this requirement is imposed by other applicable laws.*

If a student with a disability enrolled in a vocational education program required one or more of the services for full participation in 403.11(a)(2)(i), and if the district did not have sufficient Perkins funds to adequately pay for those services, district personnel would not be required to use non-federal funds to provide them. However, there may be other statutes, such as the Individuals with Disabilities Education Act, that may provide funding for such assistance.

■ Project versus Program [Section 403.190(b) and 403.191(a)(1)]

Although section 235 of the Act refers to the term *program*, the Secretary substituted the word *project* in the final regulations. The term *project* refers to any activity or service that is paid for with federal funds. The term *program* is generally defined to include the recipient's entire delivery system, regardless of whether the activities are paid for with federal or non-federal funds. Accordingly, the policy adopted by the Secretary in the regulations is to require that the full participation requirement applies only to those projects that receive Perkins funds. This policy determination has generated considerable consternation among the civil rights advocacy groups, and has formed the basis of a lawsuit challenging the validity of the final regulations. The plaintiffs in this case contend that when Congress says *program*, they mean it. These groups have forcefully argued that limiting the Perkins coverage to only those specific projects for which federal funds are used constiutes an erroneous interpretation of the Perkins statute in particular, and the civil rights acts in general. Should the Department consider any change to the final regulations in light of this legal challenge, we will use the vehicle of this Policy Update to alert the field immediately.

■ Input into State Plan [Sections 403.32, 403.202, 403.205(a), and 403.63(d)(1)]

Parents and advocates for students with disabilities have an additional avenue with which they can make their positions known in their state relative to policies and procedures that the state and local districts develop around vocational education delivery. First, Section 403.32 gives a number of assurances in the state planning process concerning how individuals with disabilities will be provided their vocational education in accordance with special education policies and procedures; how joint planning with special education and vocational rehabilitation will occur; and how other rights and protections under vocational rehabilitation and special education legislation will be afforded. In addition to these assurances, the State must document in it's plan under Section 403.32(b)(3):

> *The manner in which the state will comply with the requirements in the Act regarding access and services for individuals who are members of special populations and a description of the responsiveness of programs to the special needs of those students.*

Section 403.205(a) requires the State to establish an "expedited" appeals process —

> *by which students who are members of special populations and their parents, teachers, and concerned area residents will be able to participate directly in state and local decisions that influence the character of programs under the Act affecting their interests.*

The state must also provide technical assistance to the individuals mentioned above to assure they understand how they can participate in the state planning process and use the expedited appeals procedures.

■ Conclusion

At the time this *Policy Update* is being written, the final regulations for the Perkins Act are undergoing substantive legal challenges. These challenges are coming primarily from the special populations advocacy community. They are very clearly oriented around expanding the notion of what full participation means to include a requirement of the local vocational program to provide those necessary services, instead of only those that are prescribed in the regulations. The other significant challenge is to hold the entire vocational program that receives Perkins funds accountable to the full participation mandates, rather than just projects that are funded with Perkins dollars.

Regardless of the disposition of the challenges to the final regulations, the local vocational programs will be required to support the transition initiatives contained in special education legislation. Section 403.190(b)(1) and (5) very clearly support these transition initiatives and will not be relaxed through the legal challenges to the regulations. Students, their parents, and advocates should expect local vocational programs to be responsive in the areas of information dissemination, recruitment, services, and transition.

The National Transition Network would like to thank Ms. Lauren Jacobs with the Center for Law and Education, VOCED Project, and Mr. Michael Brustein of the law firm Brustein & Manasevit, for their assistance in preparing this Policy Update. Readers who would like more information about this project may contact Ms. Jacobs at the VOCED Project at the Center for Law and Education, 1875 Connecticut Ave., NW, Suite 510, Washington, DC 20009. An additional publication which may prove helpful is The Carl D. Perkins Vocational and Applied Technology Education Act of 1990: The Final Regulations, published by the American Vocational Association, 1410 King Street, Alexandria, VA 22314.

***Policy Update* is published by the National Transition Network (NTN). The National Transition Network is funded by Cooperative Agreement H158G20002 from the Office of Special Education and Rehabilitative Services, U.S. Department of Education. Additional copies of this publication are available through the National Transition Network, Institute on Community Integration, University of Minnesota, 6 Pattee Hall, 150 Pillsbury Drive SE, Minneapolis, MN 55455 • (612) 626-8200. Upon request, this publication will be made available in alternative formats.**

Collaborators of the National Transition Network are equal opportunity employers and educators.

15% post

National Transition Network
Institute on Community Integration
University of Minnesota
Pattee Hall
150 Pillsbury Drive S.E.
Minneapolis, MN 55455

Address Correction Requested

**Non Profit
U.S. Postage
PAID
Minneapolis, MN
Permit No. 155**